

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Gordon McLean Campbell)	
	)	No. 81-3020
Plaintiff-Appellant,	)	D. C. No. CV
	)	80-772 BJR
v.)	
	)	Memorandum
Washington State Bar)	
Association,	)	Entered
	)	October 14,
Defendant-Appellee.	)	1982

Appeal from the United States District
Court for the Western District of
Washington

Barbara J. Rothstein, District Judge,
Presiding

Submitted February 19, 1982

Before: Choy, Alarcon and Canby, Circuit
Judges.

Campbell filed a complaint under 42
U. S. C. #1983 alleging that, after the
Washington State Bar Association placed
him on the inactive status list because of
mental incompetence to practice law, the
Bar Association conspired to intimidate
him and prevent him from publicly espousing
his belief that the "air possibly is alive,

an intelligent air form of life, God, capable of oral speech", in violation of his first amendment rights. The district court granted the Bar Association's motion for summary judgment. The only issue on appeal is whether the court correctly held there was no genuine issue of material fact to be determined. We affirm.

The State Bar has satisfied its initial burden that no triable issue of fact remains. They submitted a number of detailed affidavits that confirm the State Bar's assertion that they have made no contacts with Campbell since state competency hearings were held in 1967 which resulted in his being placed on the inactive roll of the Washington State Bar. In re Campbell, 74 Wash. 2d 276, 444 P. 2d 784 (1968), cert. denied, 294 U. S. 323 (1969). Campbell has produced no evidence that goes beyond the pleadings. See Vaughn v. Teledyne, Inc., 628 F. 2d 1214, 1220 (9th Cir. 1980) (mere conclusory allegations are insufficient to defeat the

motion for summary judgment); SEC v. Murphy, 626 F. 2d 633, 640 (9th Cir. 1980) (same). The only material issue of fact that is even close to being actually in dispute is whether a certain attorney, John Kennett, who is alleged to have been part of the conspiracy, is alive. The State Bar introduced Kennett's death certificate, indicating he died in 1964.

Viewing the evidence in the light most favorable to Campbell, the district court correctly found there was no genuine issue of material fact to be tried and that the State Bar was entitled to summary judgment as a matter of law. Fed. R. Civ. P. 56(c). See, e. g., Heiniger v. City of Phoenix, 625 F. 2d 842, 843 (9th Cir. 1980). The undisputed facts fail to establish the existence of a conspiracy.

Affirmed.

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Gordon M. Campbell,)	
)	
Plaintiff,	)	CSO-772S
)	
v.	)	Order on Defendant's
)	
Washington State Bar	)	Motion for Summary
)	
Association,	)	Judgment
)	
Defendant.)	

By an Order dated October 17, 1980, the Court declared its intention to treat defendant's Motion to Dismiss as one brought under Rule 56, Fed. R. Civ. P. Both parties were granted leave to file supplemental pleadings, and both have done so.

THIS CAUSE now comes before the Court on defendant's Motion for Summary Judgment. After reviewing the Motion, memoranda, and other pleadings herein, and being fully advised, the Court rules as follows:

The Complaint in this case was filed on July 11, 1980. It purports to state causes of action under 28 U. S. C. #1343 and 42 U. S. C. #1983. Mr. Campbell claims that from 1969 to the present, he has been subjected to a "campaign of surveillance and intimidation" by agents of the Washington State Bar Association. In particular, plaintiff contends he was hindered from expounding and marketing his alleged discovery that:

...the air possibly is alive,
an intelligent air form of
life, God, blowing and moving (p.1,
Order) by means of inherent life
and will.

Complaint, pp. 1-2.

To support his claim, plaintiff relies entirely upon the facts alleged in his sworn affidavits. He alleges that from 1966-to 1968, he was harassed by a Seattle lawyer named John Kennett. Plaintiff quotes

Mr. Kennett as agreeing that Campbell's discovery about air was "potentially important". Affidavit of Gordon McLean Campbell, filed August 14, 1980, at p. 2. From this, plaintiff "concluded that defendant had hired Mr. Kennett to watch and intimidate plaintiff...." Id., at p. 2. Mr. Campbell further asserts that another attorney, "Mr. Phil Wilson," would wait for him when he returned home at night. Id., at p. 8. Various other persons are mentioned as participants in the alleged surveillance. From such clues as their presence in a certain courtroom or their known association with certain attorneys, Mr. Campbell "concludes" that they were hired by the Bar Association. Plaintiff emphasizes, for example, the sudden appearance of a detective at his place of work (Id., at p. 4) and his being locked out of his usual laundromat (Id., at pp. 7-8). Furthermore, Mr. Campbell claims he was

virtually precluded from expounding his discovery at street corners by a mysterious "flood of pretzel wagons" which suddenly appeared in downtown Seattle. (Id., at p. 7). Other incidents are mentioned, and in every case, the alleged link with defendant is based entirely on Mr. Campbell's subjective inference.

The appropriate standard for summary judgment under Rule 56 is set forth in British Airways Board v. Boeing Company, 585 F. 2d 946, 950-51 (9th Cir. 1978), cert. denied, 99 S. Ct. 1790, reh. denied, 99 S. Ct. 2420 (1978). Under those rules, the moving party bears an initial burden of showing the absence of genuine material factual issues. Here, (p.2, Order) defendant can meet this burden by presenting evidence which, if uncontradicted, would entitle it to a directed verdict at trial.

Defendant begins by documenting its past contacts with Mr. Campbell. In 1968,

acting partly on defendant's recommendation, the Washington State Supreme Court ordered plaintiff's transfer to the inactive roll of attorneys upon a finding that Mr. Campbell was not mentally competent to practice law.

See In re Campbell, 74 Wn. 2d 276, 444 P.

2d 784 (1968), cert. denied sub nom.

Campbell v. Washington State Bar Association, 394 U. S. 323 (1969). In 1979, plaintiff's petition for reinstatement to active practice was denied because plaintiff failed to address Mr. Campbell's competence to practice law. See Exhibits 5 & 6 to Affidavit of Kurt M. Bulmer, filed July 28, 1980.

Further evidence is offered through the sworn affidavits of Kurt Bulmer, defendant's general counsel and custodian of the Bar Association's disciplinary records:

The disciplinary files show that the Washington State Bar Association had no further contact of any kind with Campbell after the date of In re Campbell (1968) until 1979, when plaintiff petitioned for reinstatement to active practice.

Affidavit of Kurt M. Bulmer, filed July 28, 1980, at p. 2. Mr. Bulmer testifies from his knowledge as the official charged with "responsibility for all disciplinary investigations conducted by the Bar Association." Affidavit of Kurt M. Bulmer, filed November 6, 1980, at p. 1:

The Washington State Bar Association has never hired or directed any person, including private attorneys or detectives, to conduct any type of surveillance or intimidation of plaintiff.

Id., at p. 2. Mr. Bulmer specifically addresses plaintiff's allegations regarding a lawyer named "Phil Wilson": (p. 3, Order)

The records of the Bar Association list P. Bruce Wilson as the only member of the Bar Association either living or deceased, who has the name Phil Wilson. Defendant has never hired or directed P. Bruce Wilson to watch plaintiff for any purpose.

Id., at p. 2. This later statement is confirmed by the Affidavit of Phillip Bruce Wilson, filed November 6, 1980.

Defendant also offers solid evidence to refute plaintiff's assertion of

harassment by John Kennett from 1966 to 1968. The Bar Association submits a certified death certificate to establish that Mr. Kennett died in October, 1964. See Addendum to Defendant's Statement in Support of Motion for Summary Judgment, filed November 10, 1980.

Defendant has detailed by affidavit its contacts with Mr. Campbell during the period in question. Bar Association records confirm defendant's assertion that no other contacts were made. Specific evidence is offered to refute the claims of harassment by John Kennett and "Mr. Phil Wilson". And by plaintiff's own admission, defendant's complicity in these circumstances is an allegation entirely based on Mr. Campbell's inferential conclusions. If this were the record at trial, defendant would be entitled to a directed verdict. It follows that defendant has satisfied its initial burden of proof under British

Airways Board, supra. The following standards therefore apply:

...if the movant satisfies the initial burden, then the burden shifts to the opponent to come forward with specific facts showing that there remains a genuine issue for trial. ...The opponent must present these facts in evidentiary form; he cannot rest on his pleadings. (citing cases) Moreover, the evidence he offers in opposition to the motion for summary judgment must be "significantly probative" as to any fact claimed to be disputed. (citing cases)

SEC v. Murphy, 626 F. 2d 633, 640 (9th Cir. 1980). Mere conclusory allegations are insufficient to defeat the Motion for (p. 4, Order) Summary Judgment. See, e. g., Vaughn v. Teledyne, Inc., 628 F. 2d 1214, 1220 (9th Cir. 1980).

Plaintiff responds in his Supplemental Statement in Opposition to Summary Judgment, filed November 10, 1980. First, he contends that John Kennett's death certificate would be inadmissible at trial on grounds of hearsay. That document, however, would clearly be admissible under Rule 803(9),

Fed. R. Evid. Plaintiff contends that his own sworn testimony of subsequent contacts with Mr. Kennett is sufficient to raise a genuine issue as to the death certificate's accuracy. He suggests there may have been an impostor. He also speculates that there might have been another lawyer named "Phil Wilson".

Plaintiff offers no evidence whatsoever for his theories of mistaken or double identity. Nor does he adequately identify most of the persons who allegedly acted as agents of the Bar Association. Even more critically, he fails to offer any "significantly probative" evidence to link his alleged experiences with actions of the Bar Association. The mere circumstantial involvement of lawyers cannot justify an inference that they acted as Bar Association agents. Having failed to offer any evidence on this critical issue (other than plaintiff's own speculation

and unsupported inferences), the Complaint cannot survive the Motion for Summary Judgment. It might also be noted that plaintiff's claim for damages (up to \$5 million) is entirely without evidentiary support.

By this ruling, the Court does not question plaintiff's constitutional right to freedom of expression. Nor does the Court purport to make any judgment on the truth of Mr. Campbell's beliefs respecting the nature of air. However, plaintiff may not resist a properly supported Summary Judgment Motion when he fails to provide any evidence to connect the (p. 5, Order) alleged wrongful activities with the named defendant.

Defendant's Motion for Summary Judgment is accordingly GRANTED.

IT IS SO ORDERED.

The Clerk is directed to enter Judgment dismissing plaintiff's causes of action in

their entirety.

The Clerk is further directed to send uncertified copies of this Order to plaintiff and defendant's counsel of record.

DATED at Seattle, Washington, this 15th day of December, 1980.

s/ Barbara J. Rothstein
UNITED STATES DISTRICT
JUDGE

(p. 6, Order)

Entered on December 16, 1980.

APPENDIX C

JUDGMENT

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Gordon McLean Campbell,)	
Plaintiff-Appellant,	)	No. 81-3020
vs.	)	DC CV 80-
Washington State Bar Association,	)	772 BJR
Defendant-Appellee.)	

Appeal from the United States District Court for the Western District of Washington (Seattle).

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Western District of Washington (Seattle) and was duly submitted.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

Filed and entered October 14, 1982

APPENDIX D
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Gordon McLean Campbell,)	
)	
Plaintiff,)	Affidavit of
)	
vs.)	Kurt M. Bulmer
)	
Washington State Bar)	
Association,)	
)	
Defendant)	
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State of Washington)	
)	
County of King)	ss.

Kurt M. Bulmer, being first duly sworn upon oath, deposes and states: I am General Counsel of the Washington State Bar Association and a custodian of the disciplinary records of that Association as designated by the Board of Governors.

The Disciplinary files of the Washington State Bar Association show that plaintiff Gordon Campbell was brought before a Local Hearing Panel of June 19 and 20

of 1967 on a charge of incompetency to practice law. The panel recommended that (p. 1) plaintiff be put on inactive status.

This matter was referred to the Board of Governors of the Washington State Bar Association on September 9, 1967, and the Board adopted the findings and recommendations of the hearing panel.

The Board referred this matter to the Supreme Court of the State of Washington. That Court heard the matter on June 25, 1968, and found plaintiff to be unable to competently represent clients in legal matters. The Court placed plaintiff on inactive status. This decision is contained in In re Campbell, 74 Wn. 2d 276, 444 P. 2d. 784 (1968), cert. denied sub nom. Campbell v. Washington State Bar Association, 394 U. S. 323 (1969), a copy of which is attached to this affidavit for the Court's reference.

The disciplinary files show that the

Washington State Bar Association had no further contact of any kind with Campbell after the date of In re Campbell until 1979, when plaintiff petitioned for reinstatement to active practice.

The disciplinary files show that plaintiff filed a Petition for Reinstatement to the Active Roll of Attorneys of the Washington State Bar Association on July 9, 1979, before the Disciplinary Board. The Disciplinary Board reviewed and considered plaintiff's Petition for Reinstatement on August 3, 1979. The Board ordered no further action on the petition, due to plaintiff's failure to aver any change in his mental condition. The Board Order was dated August 23, 1979.
(p. 2)

Finally the disciplinary records show that plaintiff brought suit in the Supreme Court of the State of Washington entitled Gordon McLean Campbell vs. The Disciplinary

Board of the Washington State Bar Association, Washington Supreme Court Cause No. 46438. This suit sought to compel the Disciplinary Board to hold a hearing on plaintiff's petition for reinstatement. The Court entered a Ruling Dismissing Petition of plaintiff on September 23, 1979. Plaintiff filed a Motion to Modify Ruling which was denied by the Washington State Supreme Court on October 12, 1979. Certiorari was denied by the U. S. Supreme Court. _____ U. S. _____, 100 S. Ct. 1032 (1980).

I was personally involved in the handling of Campbell's 1979 reinstatement petition. No "surveillance" of Campbell was conducted at any time by the Washington State Bar Association or any of its employees or agents in connection with that petition or otherwise. All contacts and communication with Mr. Campbell were in writing. Since his petition was invalid

on its fact, no investigation whatever was conducted into his mental status or any of his actions, activities, or beliefs.

Attached hereto are true copies of all documents referred to in this affidavit.

s/Kurt M. Bulmer

Kurt M. Bulmer

General Counsel

Washington State Bar

Association (p.3)

Subscribed and sworn to before me this 25th day of July, 1980.

s/Robert T. Farrell

Notary Public in and for

the State of Washington

residing at Seattle. (p. 4)

Exhibits #1-6 to the above affidavit are omitted since they are not material to the issues of the present case. The exhibits are: (1) Opinion of In re Campbell, 74 Wn. 2d 276, 444 P. 2d 784 (1968); (2) Opinion of Campbell v.

Washington State Bar Association, 263 F. Supp. 991 (1967); (3) Petition of plaintiff for reinstatement to the active roll of attorneys; (4) Board order directing no further action; (5) Ruling dismissing petition; (6) Order denying motion to modify ruling.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Gordon McLean Campbell,)	
	)	Cause No.
Plaintiff,)	
	)	CB0-772S
vs.)	
	)	Affidavit of
Washington State Bar)	
Association,	)	Kurt M. Bulmer
)	
Defendant.)	

State of Washington)	
	)	ss.
County of King)	

Kurt M. Bulmer, being first duly sworn upon oath, deposes and states:

I am employed as the General Counsel of the Washington State Bar Association

and have responsibility for all disciplinary investigations conducted by the Bar Association. I am one of the custodians for the records of that Association.

Gordon McLean Campbell states on pages 1 and 2 of his affidavit to this court that John Kennett, an attorney, (p. 1) "watched and intimidated" plaintiff at the direction of the defendant commencing in 1966. The records of the Bar Association indicate that attorney John Kennett died on October 17, 1964. Attached is a copy of our record concerning Mr. Kennett's status.

Page eight of plaintiff's affidavit mentions attorney, Phil Wilson. The records of the Bar Association list P. Bruce Wilson as the only member of the Bar Association either living or deceased, who has the name Phil Wilson. Defendant has never hired or directed P. Bruce Wilson to watch plaintiff for any purpose. See attached affidavit of P. Bruce Wilson.

The Washington State Bar Association has never hired or directed any person, including private attorneys or detectives, to conduct any type of surveillance or intimidation of plaintiff.

All contacts and communication that the Bar Association had with plaintiff in connection with his reinstatement petition, were conducted by mail.

Attached hereto are true copies of all documents referred to in this affidavit.

s/Kurt M. Bulmer

Kurt M. Bulmer

Subscribed and sworn to before me this 23rd day of October, 1980.

s/Robert T. Farrell

Notary Public in and for
the State of Washington
residing at Seattle (p.2)

Attached to the above affidavit is a registration card of the Washington State Bar Association indicating that Jonn J. Kennett died October 17, 1964.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Gordon McLean Campbell, }
Plaintiff, }
vs. }
Washington State Bar }
Association, }
Defendant. }

Cause No. C80-772S
Affidavit of
Phillip Bruce
Wilson

State of Washington) }
County of King) ss.

P. Bruce Wilson, being first duly sworn
upon oath, deposes and states:

I am the Director of the King County
Office of Public Defense. I am an attorney
licensed to practice law in the State of
Washington.

I have never acted as an agent or
employee of the Washington State Bar
Association. I have never conducted (p. 1)
surveillance or intimidation of Gordon M.
Campbell nor was I a friend of John Harris.

I have never been employed in the insurance business. I do not even know Gordon Campbell, nor have I ever met him or talked to him.

s/P. Bruce Wilson

P. Bruce Wilson

Subscribed and sworn to before me this
3rd day of November, 1980.

s/ James D. Woodward

Notary Public in and for
the State of Washington,
residing at Issaquah
(p. 2)

Death Certificate

By an addendum dated November 10, 1980,
defendant filed a certified death certificate
for John J. Kennett, showing his date of
death as October 17, 1964.

APPENDIX E

UNITED STATES DISTRICT COURT, WESTERN
DISTRICT OF WASHINGTON

Civil Action, File

Number C 80-772S

Gordon McLean Campbell,)	
Plaintiff	)	Affidavit of
v.	)	Gordon McLean
Washington State Bar	)	Campbell
Association,)	
Defendant)	
State of Washington)	
County of King	)	ss.

Gordon McLean Campbell, being first duly sworn, on oath, deposes and says that he is the plaintiff in the above-entitled action. That during 1964, plaintiff practiced law in Seattle, Washington. That, to the best of plaintiff's knowledge, one John Kennett was a member of the King County Board of Commissioners, in 1964. That, if it was not the Board of Commission-

ers to which he belonged, it was one of the other Councils or Commissions in the King County Courthouse.

That, to the best of plaintiff's knowledge, this John Kennett is not the same John Kennett (alias Lawyer Dahlberg) referred to in plaintiff's first affidavit herein. Plaintiff does not know (p. 1) whether the John Kennett who was a member of the Board of Commissioners was a lawyer or not.

s/Gordon McLean Campbell

Gordon McLean Campbell

Subscribed and sworn to before me
this 10th day of November, 1980.

s/David Huguenin

Notary Public in and for
the State of Washington,
residing at Bellevue. (p. 2)